

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Improving Public Safety Communications in the)	
800 MHz Band)	WT Docket No. 02-55
)	
Consolidating the 900 MHz Industrial Land)	
Transportation and Business Pool Channels)	
)	

To: The Commission

**COMMENTS
OF THE NATIONAL ASSOCIATION OF MANUFACTURERS
AND MRFAC, INC.**

The National Association of Manufacturers (“NAM”) and MRFAC, Inc. (“MRFAC”) hereby submit their comments in response to Public Notice, DA 02-2202, released September 6, 2002.

INTRODUCTION

The NAM - 18 million people who make things in America - is the nation’s largest and oldest multi-industry trade association. The NAM represents 14,000 member companies (including 10,000 small and mid-sized manufacturers) and 350 member associations serving manufacturers and employees in every industrial sector and all 50 States. Headquartered in Washington, D.C., the NAM has 10 additional offices across the country.

MRFAC is one of the Commission’s certified frequency coordinators for the private land mobile bands from 30 to 900 MHz. It began operation as the frequency coordinating arm for the NAM. For the past 23 years MRFAC has operated independently, providing coordination and licensing-related services, particularly for manufacturers and other industrial and business

entities. MRFAC has long participated in spectrum rule-makings affecting the interests of manufacturers.

As the Commission knows, NAM/MRFAC have participated actively in this proceeding. From the filing of Nextel's "White Paper," to the December 21, 2001 filing of the NAM/MRFAC re-banding plan, to participating in the joint Opening Comments of other private wireless groups, NAM/MRFAC have expressed the concerns and recommendations of American manufacturers in this complex matter. Throughout this process, NAM/MRFAC's efforts have been guided by certain basic principles: solving the Nextel-public safety interference problem; ensuring that innocent bystanders -- such as Business and Industrial/Land Transportation ("B/ILT") licensees -- not have to bear onerous burdens in order to cure interference not of their making;¹ and not advantaging or disadvantaging any individual company or industry. These principles should likewise guide the Commission as it seeks to resolve this matter.

Most recently, NAM/MRFAC filed Reply Comments in this proceeding offering their views on multiple competing proposals now of record with the agency. One of those proposals is that put forward by Nextel, public safety, and certain private wireless interests; this proposal is the subject of the above-referenced Public Notice (the "Public Notice Plan"). While NAM/MRFAC have commented previously on this proposal, they take this opportunity to reiterate their concerns and position.

DISCUSSION

Preliminarily, the record should be corrected in one important respect: The plan is not a "Consensus Plan." It excludes important elements of the private wireless community such as manufacturers and utilities. It excludes radio equipment manufacturers such as Motorola. It

¹ NAM/MRFAC members also have experienced interference to their 800 MHz B/ILT facilities. *See, e.g.*, NAM/MRFAC Comments at 6-8.

excludes cellular operators. In short, while there is merit in much of the plan, it is by no means a “consensus” document (as the Commission itself appears to recognize by use of the qualifier “so-called”).

On the merits, the best long-term solution is for public safety users to utilize upper 700 MHz spectrum where they would achieve maximum separation from 800 MHz systems with a cellular architecture (*e.g.*, Nextel and others). This is not, however, a sufficient solution on its own. It does nothing to remedy interference to B/ILT licensees on interleaved 800 MHz frequencies, or the potential of interference from additional cellularized operations.

Thus, re-banding 800 MHz also appears necessary. The re-banding plan that NAM/MRFAC submitted last December addresses several aspects of this problem. It does so by restricting cellular systems of the Nextel type to one portion of the band, while public safety and B/ILT systems would operate in another portion. Importantly, it obviates the need for industrial licensees to migrate to an entirely different band at exorbitant cost and disruption. While the Public Notice Plan shares this particular benefit, it suffers from serious shortcomings.

First, the Public Notice Plan gives Nextel 10 MHz of spectrum at 1910-1915/1990-1995 MHz as the *quid pro quo* for its support.

Nextel today occupies spectrum which is generally non-contiguous. In exchange, the Plan would provide Nextel with a bounty of unencumbered, contiguous spectrum. This, in and of itself, is a basis for concern: It amounts to rewarding a party responsible for interference with an upgrade to its current spectrum assignments. It should instead hold the party responsible for rectifying the interference that it has caused. The Commission should not put itself in the position of seeming to improve -- much less actually improving, as here -- an interfering party's position as the price for its agreement to cease causing the interference.

By its use of 1.9 GHz spectrum, the consensus plan would re-allocate spectrum set aside for Mobile Satellite Service (“MSS”) operations just two years ago.² MSS operators are in the process of implementing that allocation. To strip this spectrum from MSS at this point would not only be inequitable, but could also adversely affect service to rural and underserved communities.³ Among the groups the Commission has identified as vulnerable to delayed deployment of advanced services are those living in rural areas, areas which satellites are well-suited to serve.⁴ Reallocating spectrum which can be used for that purpose would thus undermine a core Commission policy.

But if Nextel is not to receive additional spectrum at 1.9 GHz, how to keep it whole? As NAM/MRFAC originally proposed, Nextel and public safety should swap spectrum within the 800 MHz band such that public safety and Business/ILT users (i.e., high site systems) are separated from Nextel and other low-site operators.

Under this approach, Nextel needs no “new” spectrum at all; rather its replacement spectrum can be secured by re-banding within 800 MHz. Motorola has expressed a similar view coupled with the notion that re-banding be performed on a market-by-market basis.⁵ In this

² See e.g., *The Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band*, 15 FCC Rcd 16127, 16177-16180 (2000), *reconsidered on other grounds*, FCC 01-224, released August 20, 2001 (Memorandum Opinion and Order and Further Notice of Proposed Rulemaking).

³ “The widespread deployment of advanced services has become a central communications policy goal of the Commission.” *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996 (Third Report)*, FCC 02-33, released February 6, 2002, at para. 2 (footnote omitted).

⁴ See *ibid.* at paras. 3, 7, 16.

⁵ See Reply Comments of Motorola, Inc. filed August 7, 2002.

scenario, 700 MHz could be looked to as a source of additional spectrum that is necessary to meet public safety needs.

Another possible approach might be to secure the replacement channels from 3G spectrum (2.110-2.165 GHz).⁶ However, this approach raises its own set of issues, not the least of which is the expectation that this spectrum would be auctioned. Moreover, it would have to be packaged in such a way as to avoid the upgrade issue referenced above.

Certainly, these approaches, and others brought forward in the Reply Comment round, bear further examination.

Another serious problem with the Public Notice Plan (a problem it shares with the other proposals before the Commission) is that it does nothing to address the complex issues involved in the U.S.-Canada and U.S.-Mexico border areas where interference is exacerbated due to the interleaved use of the spectrum by each country. The Commission cannot resolve this proceeding without first fully addressing the border area problem. In all events, border area licensees must be permitted to maintain their primary status until such time as appropriate coordination and bilateral agreements have been reached. Attention must be given this issue before the Commission can be said to have a proper record.

CONCLUSION

Much progress has been made in narrowing the complex issues raised in this proceeding. However, the record does not at this juncture permit a reasoned resolution of all the remaining issues. This is especially true of the Public Notice Plan which, as shown, has serious

⁶ See National Telecommunications and Information Administration, *An Assessment of the Viability of Accommodating Advanced Mobile Wireless (3G) Systems in the 1710-1770 MHz and 2110-2170 MHz Bands* (rel. July 23, 2002) (<http://www.ntia.doc.gov/reports.html>).

deficiencies. Accordingly, the Commission should consider formulating a more specific set of proposals based on the record thus far, and issuing same in the form of a further notice.

Respectfully submitted,

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